

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
October 16, 2006, at 9:00 a.m.
Room 303 State Capitol Building
Helena, Montana

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Secretary of State Brad Johnson, and Superintendent of Public Instruction Linda McCulloch

ABSENT: State Auditor John Morrison

Ms. McCulloch moved for approval of the minutes from the September 18, 2006, meeting of the Board of Land Commissioners. Seconded by Mr. McGrath. Motion carried unanimously.

BUSINESS CONSIDERED:

1006-1 DUTCHMAN WETLAND PROJECT – FWP

Ms. Sexton, Director DNRC, said this is a FWP project and under this the FWP proposes to accept ownership of the Dutchman Coulee wetland from Atlantic Richfield Company (ARCO) together with access easements. Additionally there will be a fee title transfer of a proposal of two small conservation easements.

Larry Peterman, FWP Chief Field Operations, said I am here today to discuss and seek your approval for the department accepting the Dutchman Wetlands that Ms. Sexton referred to. The Dutchman Wetlands are located between Anaconda and Warm Springs in Deer Lodge County and the area facing the wetlands is the Anaconda airport. The wetlands property is located within the Anaconda Smelter Superfund Site and is approximately 3,750 acres. This project was triggered in 1999 by the Streamside Tailings Consent Decree which was part of the Upper Clark Fork Superfund clean up. As part of that Consent Decree there was a requirement for the state to expend \$3.2 million to create up to 400 acres of new wetlands, newly constructed wetlands, restoration of destroyed wetlands, enhancement of existing wetlands, or enhancement of riparian areas along the Upper Clark Fork and its tributaries. The Consent Decree required that these wetlands be protected in perpetuity. There were similar requirements for Atlantic Richfield Company (ARCO) and for the Confederated Salish and Kootenai Tribe (CSKT) who are also involved in this Consent Decree. The CSKT are satisfying their Consent Decree obligations by restoring portions of the Jocko River Basin. With the donation of the 3,750 acres of Dutchman Wetland to the FWP and several aspects of the agreement the FWP has that are requirements for the department to do, it will satisfy both ARCO and FWP's requirements for the Consent Decree. This property was originally owned by the Uelands and through an agreement to purchase by ARCO of the Ueland Ranch and the donation of the wetland property to FWP there are several things that go along with that. First of all, in order to be restored this property would be managed as a wildlife management area. We currently have the Warm Springs Wildlife Management Area adjacent to it, and this would expand that area by approximately 3,700 acres. It would put this property into federal management of the Wildlife Management Area securing it with walk-in access only and enhancing the relevant properties by removing grazing for approximately five years and evaluating the vegetative response. That's how the wetlands area can be enhanced. Grazing could then be reestablished depending upon what the survey results show. They would be monitored every five years thereafter for vegetative response and the enhancement of wildlife as a portion of the project. The other portion of the project is all the \$3.2 million the FWP has to create, enhance, or restore the wetland/riparian areas will be donated to the department

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and we won't use any of that money for that. We will take the remainder of the \$2.8 million to restore and remediate Willow Creek and take care of that contaminated area. Willow Creek is part of the superfund area. In addition we will go to the Natural Resource Damage Program (NRDP) and seek funding for the restoring and remediating Warm Springs Creek. So in addition to the wetland obligations from ARCO we will have Willow Creek and Warm Springs Creek restored in this package. This is an extremely important area for recreation and the public in the Upper Clark Fork. First of all, the Dutchman Wetlands currently provides under a block management program, about 1,000 days of hunting per year. It is home to about 19 different species of waterfowl as well as shore birds and small mammals. We have elk, black bear, moose, and mule deer in the area who use that area extensively. So it is an important wildlife-waterfowl area that we would be able to manage and protect in perpetuity. Another important aspect of this project is that along with the 3,750 acres we will acquire from ARCO, we will receive 40 cfs of some of the earliest water rights in the area because during the process of ARCO acquiring the Ueland property, they retired a number of the sprinkler irrigation systems which freed up the water. We would be able to utilize up to 40 cfs of water for rewatering Warm Springs Creek. Warm Springs Creek is one of the most important tributaries to the Upper Clark Fork, it provides spawning for the brown trout population in there and also provides a migratory corridor connecting some of the remnant bull trout populations in the upper end of Warm Springs Creek to the rest of the Clark Fork. One of the big problems in addition to habitat and contaminants in the Upper Clark Fork is instream flows. It is a heavily utilized area and during drought periods frequently Warm Springs Creek doesn't flow at all. This would be a huge benefit to restoring the fishery and riparian area of Warm Springs Creek. That is another very significant component as well. We worked on this project extensively with ARCO, the Uelands, and the NRDP. The NRD program was extremely valuable in helping us work through and maintain the integrity of this process. We consulted with the DEQ and the EPA as well. I might mention also assisting us in setting up this project a vital partner was the US Fish and Wildlife Service (USFWS) because they are the ones who eventually sign off on the wetland restoration and have to agree that this is a valid project and meets the objectives.

Some of the issues that came up and have been discussed during this process was about fish and wildlife, if this was a contaminated area how safe are these fish or the wildlife that live there to eat and consume? We've looked extensively at the fish in the area. The major components of concern are copper, zinc, and arsenic, and there is also some cadmium and lead. Unlike mercury, which accumulates in tissues of animals but is not a major component here, copper, zinc and arsenic doesn't accumulate in tissues it is found more in organs like the kidneys and liver. But it doesn't accumulate in the tissues of animals that people consume. With the component of metals we're looking at and the studies we've done as far as the fisheries go, it is not an area of concern. The waterfowl are tested regularly for these very same things and they are also found to have no significant levels of those contaminants. We've looked at those aspects which was a concern when we first started this project but the metals that are present don't affect the tissues and the public health concerns. We are pretty satisfied with that. We've gone through an extensive public involvement process, we've done an EA, we've held public hearings in the Anaconda area with a lot of support for this project for the public benefits, the wildlife, for the public access it proves and for the instream flows. One of the issues raised by the county was the affect of this wetland and the enhancement of the wetland on the airport. The airport has concerns about maintaining their operation and potentially expanding the airport. We met with the county, the airport representatives, and the FAA to discuss this issue which concerns the runway. We agreed to limit any active new wetland development within 10,000 feet of the runway. Any enhancement or active new wetland development, done through vegetation, will be done beyond 10,000 feet of the runway and both the FAA and the airport representatives said that is fine. The other issue they had was they want to run a fence along the runway and possibly along another one but that is something they will work out with ARCO. Those were the two issues they had, the wetland development along the runway and the fencing. Other than that, both the county and the airport representatives are supportive of this project moving ahead. We brought this

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before the FWP Commission in September and there are a couple of conditions we have for this ultimately to be accepted and move ahead. The reason these conditions are in there is that this is a very complicated process we are going through, and having these agreed to up front sets the side boards the state will operate under in accepting this and puts us in the driver's seat as far as if this goes ahead this is the terms and conditions we will accept the property under for management. We've done MEPA compliance, the FWP Commission has approved it, we are before the Land Board today for approval. There are conditions about funding and in this particular project we and the parties, the USFWS, have discussed how do you operate and maintain this property in the future to make sure there is adequate funding. We have agreed that out of the \$2.8 million available to set aside \$500,000 for an operation and maintenance trust fund. In addition, the USFWS will set aside \$500,000 for O&M. We will have a \$1 million operation and maintenance trust fund for this property to ensure its continuation in perpetuity. We don't always have a trust fund set up for something we acquire and that is a very important aspect of this. This is also contingent upon getting approximately \$7 million from the Upper Clark Fork Restoration Fund for the Warm Springs Creek restoration and remediation; it is contingent on obtaining the water rights from ARCO, and they have agreed to do that; and it is contingent upon an agreement with the USFWS that this project is going to meet the requirements for wetland restoration and enhancement. The USFWS has sent FWP a letter saying if this goes through it will meet the requirements.

Mr. McGrath said could you go over again how much you are going to ask the NRDP fund to contribute for the Warm Springs Creek project?

Mr. Peterman said the estimate is currently \$7 million for the restoration and mediation. This is an estimate, it will be refined when more detailed studies are done on the actual engineering.

Governor Schweitzer said you mentioned Willow Creek and that was \$2.8 million. The source of that money comes from where?

Mr. Peterman said that \$2.8 million comes from the \$3.2 million that was allocated to the FWP in the initial Streamside Tailings Consent Decree for wetland enhancement.

Governor Schweitzer said if we spend less than \$2.8 million in the remediation do we get to keep the money?

Mr. Peterman said that can be used in other parts of this restoration. That would lessen the amount we'd have to ask for for Warm Springs Creek.

Governor Schweitzer asked General McGrath if the state was taking on any liability that we ought to be concerned about?

Mr. McGrath said the simple answer is that this is contaminated property, it is not property that can be used, for example, for subdividing, and there is some question yet whether it can be used for grazing. They've done the studies and think it can be used for wetland development which is one of our responsibilities. So, basically, that's why in the context of this agreement ARCO purchased this property with the idea that the state would then take ownership and create a wetland. There is certainly potential liability but there is not going to be a release of matter into the Clark Fork or anything like that. The question is what can we use this property for? We know we can use it for wetland development. Grazing? The jury is still out on that.

Bob Lane, Chief Legal Counsel for FWP, said an important part of this acquisition would be the water rights in Warm Springs Creek. In a section of that creek from the Gardiner Ditch down to the town of

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Warm Springs right about at the confluence of the Upper Clark Fork River, that section, about eight miles, is frequently dewatered especially in dry years. Most of the summer at the lower end of that section there is no water in Warm Springs Creek, which is critical habitat. The objective here was to attempt to put water instream in that section. This would be judged by two gages. One gage above the Gardiner Ditch and about eight miles below that just above the confluence with the Upper Clark Fork, a second gage. I want to tell you what typically happens and what has been happening and then tell you what is going to happen with the water we retained because that is the measure of the success here and the only measure. Typically in dry years 99.8% of the time at the gage just above the Gardiner Ditch there is at least 20 cfs in the river. At the gage just above the confluence with the Upper Clark Fork, only 21% or less of the time, is there 20 cfs. Quite often during those dry periods there is no water at all because it has been diverted into the Gardiner Ditch. The principal user out of the Gardiner Ditch was the Uelands. ARCO is retaining those rights, they will be retiring that irrigation and the water will then be available for use instream. That's the right we are going to be getting from ARCO. They are reserving a part of that for remediation, restoration and other environmental needs but that right will only be needed for them until things are cleaned up and they won't need it anymore. It's about 5 cfs they are retaining. The other rights are 40 cfs that we would have, that is, there can be no water diverted at the Gardiner Ditch unless both gages above the Gardiner Ditch and above Warm Springs Creek read 40 cfs. There is one other user on the Gardiner Ditch and that user will be taking about one third of the water. Taking all of that into account, and taking into account the fact that nature doesn't always provide 40 cfs or more at the Gardiner Ditch, what this will mean is we will get a fraction of that water but it will be water that wasn't there or quite often when there was no water in the lower part of Warm Springs Creek. For example, I mentioned there is 20 cfs of natural flow at the Gardiner Ditch, above the Ditch, 99.8% of the time. We will get about 12 cfs of that 20 cfs of flow. The same sort of ratio will continue up. If it is 40 cfs, we will get a little over 25 cfs. So we are going to put real water into the stream, about the best we can do under these circumstances. Basically, there are no other diversions above the Gardiner Ditch, it is the first diversion. There is a five-year study that shows the fact that those dry years, from 1998 to 2002, 99.8% of the time there is at least 20 cfs there so we're going to be giving water where there wasn't any water. That is the most significant thing about this very valuable deal. There will be water when there wasn't water because we have a right and because water is available physically.

Governor Schweitzer asked if the wetland was totally natural or there had been a recharge through irrigation from the Gardiner Ditch. My point is, if we are no longer irrigating up there will we still have the same amount of wetland that has been occurring? Has this been an enhanced wetland by return water? Because, honestly, 20 cfs or even 12 cfs even with sprinklers is a lot of water for that area. So it must be going somewhere and I am assuming it has been a recharge for the wetland.

Mr. Lane said we are also getting rights in Lost Creek and Dutchman Creek that feed the wetlands. Those rights will be retained for use in the wetlands so we are confident we will continue to have the wetlands watered because we are not only getting the water in Warm Springs Creek but we're getting the water in Dutchman and Lost Creeks. Those are the two creeks that feed the wetlands. So what we might lose through the return flows from irrigation we're going to be preserving through the use of the water out of these two creeks rather than lose them to irrigation. We've considered that.

Mary Capdeville, Dept. Justice attorney with the NRDP, said I was going to talk about the Consent Decree but I should probably get into the environmental liability concerns. The Dutchman wetland area is part of the Anaconda Smelter superfund site. It is also a high arsenic area. It is considered unacceptable for residential development, commercial development, and subdivisions. What the EPA has determined is acceptable is non-motorized recreational use. One of the reasons the state is such a good candidate for ownership is because the wildlife management area would only allow pedestrian traffic with no motorized use. In addition to working for NRDP, I am also the DEQ attorney for the superfund site so

for that reason I am aware of the issues with both clean up and the liability issues. As part of the superfund site, the Dutchman area is also subject to the federal superfund law known as CERCLA, and this Dutchman area would be part of the site. The liability that attaches to CERCLA sites could include the cost of the clean up. However, Congress anticipated that, at times, the best use of property was to have it in government lands. They, therefore, passed CERCLA Section 104(j) which effectively seals the state from liability under superfund. It states that a state will not be liable as an owner of the property under superfund if the property is acquired through Section 104(j). Section 104 (j) acquisition is one condition that is on the list of 13 conditions that would have to occur before this property is transferred. The other thing we have done is this property will not transfer unless it is transferred as part of a federal superfund consent decree. By doing that we will have covenants not to sue from the United States as well as the Atlantic Richfield Company and we will also get contribution protection under that. In that way, what this consent decree and the 104 (j) together will do is limit the state's liability to common law liability which would be tort and effectively shield it from state and federal environmental law liability. I should note this would be conditioned upon the 13 conditions, it would not be direct approval and the transfer conditions, although they require Land Board approval, also requires other approval such as the Attorney General's and the Governor's. The approval given here would not be equivalent to that.

Governor Schweitzer said the action we have here today is just to move it to the next step. It is contingent upon the 13 conditions and addition to that would be signing off by the Attorney General and the Board agreeing to the \$7 million transfer.

Motion was made by Mr. McGrath to approve the acquisition subject to the conditions set out. Seconded by Ms. McCulloch. Motion carried unanimously.

1006-2 EUSTANCE RANCH LAND BANKING PARCEL FINAL APPROVAL

Ms. Sexton said this is the first property we are bringing forward as part of land banking for final approval. Preliminary approval was given by the Board in July 2006 and since that time the department has engaged in the valuation of the property as per our land banking rules. We solicited nominations and had 15 nominations for acquisition. This nomination was made by FWP. We secured a purchase agreement and conducted a tour of the property on September 19, 2006, for the public and interested parties. There was a group of people who did view the property. We conducted an in-depth evaluation of the property and, following final approval by the Board, the department will proceed to closing and acquire the Eustance Ranch for the amount of \$718,256.00. There is attached to this agenda item the Eustance Ranch report summary. It is about 900 acres and the annual return rate over 20 years will be about 2.32% and for the properties which we are selling it is less than 1%. This has a great deal of potential for multiple use, one of the most outstanding characteristics of this property is its cultural value. The rimrocks in Section 7 are an extension of the buffalo jump which is managed by DFWP as part of Ulm-Pishkun and parts of this buffalo jump have not been excavated and are considered highly valuable. The seller is conveying 100% of the mineral rights. This property offers some upland game bird and antelope hunting. There are agricultural uses, as part of this land is currently being farmed. We are also receiving the property at a discount from the appraised value. We are very fortunate to bring forward this property for final approval and it is my recommendation the Board grant final approval to the acquisition of the Eustance Ranch under the land banking program.

Joe Maurier, FWP Parks Administrator, said a number of years ago when I worked for another state we toured Ulm-Pishkun with a number of state park directors from around the country. One of the things I distinctly remember the staff telling us at the time is if we could ever get the rest of the buffalo jump it would be the greatest thing that ever happened to this park. So fast forward a number of years, and here I am working for the great State of Montana and this spring had the fortune to visit the park and meet with

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members of the All Nation Pishkun Association and the staff and talk to them about what is the most important thing we can do for this park. And through our discussions we all left the meeting agreeing that probably purchasing the rest of the buffalo jump would be terrific. It was through Brad Hamlett telling us the family was very interested in selling the property and, in fact, protecting part of the jump. To us, the best thing about it is as we looked at the site, clearly it is grown over and you can tell from first blush that it hasn't been picked over. So we are hoping there are significant cultural resources there. We are going to be very careful in studying and surveying the area and hopefully it will help us tell the story of the park in greater detail. I am privileged the landowners were willing to sell to us. We did have to think about how we would make it work, the land banking program was available and we talked about how we could make that work for FWP. I have been working with staff and we have come up with an arrangement which I think is very satisfactory to both DFWP and DNRC. The other thing I would note, as part of the management plan we talked about changing the name of the park. It doesn't accurately reflect all we need to reflect about this park, we want it to be more inclusive of all the tribes that use the park. While doing this we want to be culturally sensitive to everything and I think we want to include, no matter what the name is, the words "buffalo jump" at the end. Without that hook we're not attracting as many folks off the highway to come and visit the park and understand what it is about. What we're doing is our park manager, Richard Hopkins, has sent letters to all the tribes, we are going to meet with the tribes to find out what their story is. Through that process we are going to come up with a name but what we have guaranteed is that no matter what happens we are going to tell the story of each tribe in the visitor's center itself. I am really grateful we are here today and able to do this.

Rebecca Roberts, Treasurer for All Nation Pishkun Association, said you can see by just saying Pishkun Association it doesn't have anything to do with the buffalo jump and so we're hoping the Board and the FWP will be able to change that name. I represent five enrolled members of tribes from around Montana. The five tribes I represent are on our executive board so in terms of our Native Americans here in Montana we are very very proud and very grateful this morning to the Eustance family for honoring us and giving us this part of the land. We hope that Native Americans will also be involved in the planning and carrying out of different projects that are intended and planned for the north edge of the buffalo jump. Thank you again very much to everyone who helped this come to fruition.

Brad Hamlett, Vice President All Nation Pishkun Association, said our group is a 501C3 organization that supports the state park at Ulm. I would like to make aware to everyone here the importance of this part of the jump. First of all, no matter what we call the jump, it is the largest buffalo jump in North America and it's believed to have been used for at least 1,000 years. With more archaeological investigation we feel that the timeframe will expand. What is unique about the land acquisition here is this is the north jump, all of the rest of the jump faces to the south. It is also the pathway in which the Native Americans would use to get upon the top of the jump and its the pathway the buffalo would use to get down off the plateau to the Sun River and to the Missouri River. The other thing is this buffalo jump has never been commercially dug up to recover bones like the south part of the jump has been. Taking that into mind, there are still the drive lines in existence, there are grave sites, and teepee rings. We feel that when the archaeologists go into here, if that is to be, they will find a wealth of information. Ethnographically and historically it is very important. I, too, want to thank the Eustance's that contacted me and we were able to work with them. They were a willing seller. This is something very significant for the State of Montana.

Motion was made by Mr. Johnson to grant final approval to the land acquisition. Seconded by Mr. McGrath. Motion carried unanimously.

1006-3 CASH LEASING/LEGISLATION

Ms. Sexton said about a year ago the Board talked about cash leasing for agricultural trust lands. We have reviewed alternatives for establishing and implementing cash rates and have come up with what we view as the preferred approach. That approach was to use not just the county rates for leasing, but soil productivity, precipitation, crop rotation, farm payments, and typical shares, in other words a number of criteria to set the per acre rental rate. My staff has been working on this to come up with this approach. Attached to the agenda item is draft legislation and Section 77-6-501, MCA, spells out how this rate would be proposed. The leases would be renewed on a cash basis as they come up for renewal. We would have over a ten-year period to phase this in, it wouldn't happen all at once. As agricultural leases come due for renewal they would be phased in. We have about 300 per year that we would be phasing in for cash leasing. Secretary of State Brad Johnson has expressed interest in this on the legislation. Several of the farm and ranch groups have recommended the department look at cash leasing. This is a draft and I recommend we seek legislation authorizing cash leasing on agricultural trust lands at the request of the Land Board during the 2007 legislative session.

Governor Schweitzer said I am unclear what we are doing. We would take a position as the Land Board for legislation but potentially Brad would lead it? How does that work?

Ms. Sexton said that is correct. This is similar to the approach we are taking with the land banking proposal.

Roger Bergmeier, President, MonTRUST, said we have been concerned about crop share leasing on agricultural lands for a long time because of the inaccuracy of reporting, or lack of reporting and feel this is a better way to ensure the proper amount of income to the trusts. We are in favor of cash leasing.

Motion was made by Ms. McCulloch to approve the cash leasing proposal and legislation. Seconded by Mr. Johnson.

Mr. Johnson said let me just say that I think this is the right thing for us to do as a Board. The department estimates we are probably leaving \$1 million per year on the table by virtue of staying with the crop share program. It is important from that standpoint. And I certainly would be happy to take the point on this in the next session but in doing so I would like to be assured, Governor, of your support through the process and the availability of the department as well.

Governor Schweitzer said that's the action we are discussing here, that the Board would come behind any proposed action we would take. I think is the right approach for us to take. Both Brad and I come from an agricultural background and it seems to us that when you weigh all the alternatives: the cost of administering the cost share basis, the fairness to the landowner, the certainty it gives the landowner and his financial community he works with. A lot of people coalesce around cash leasing and I think our university economists would suggest the same to us.

A vote was taken on the motion to approve the cash leasing proposal. Motion carried unanimously.

1006-4 GARFIELD COUNTY LAND BANKING PARCELS FINAL APPROVAL

Ms. Sexton said in May 2006, the Board approved 32 isolated and lessee-nominated parcels totaling 9,600 acres in Garfield County. In June 2006, the Board set the minimum bid for 28 parcels totaling 7,040 acres which brought the number of acres available to slightly less than 20,000 acres for land

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banking. On October 4, 2006, these parcels were sold at auction. Four parcels were competitively bid and sold for 2-3 times the minimum bid. These were isolated parcels and these are noted in the agenda item but I'll point them out. Parcel #82 was only 40 acres, it was an isolated parcel and the minimum bid was \$4,600 and it went for \$10,000; #110 was another 40-acre parcel with a minimum bid of \$4,400, it went for \$12,000; #113 was a 40-acre parcel with a minimum bid set at \$5,200 and it was sold at \$14,000; #178 another 40-acre parcel, isolated, with a minimum bid of \$4,600 and it sold for \$15,000. These were all isolated parcels without legal access. The total was just under \$1 million, at \$947,000.00, for 7,040 acres. This is a request for final approval. The beneficiary for these Garfield County parcels is the Common Schools.

Motion was made by Mr. McGrath to approve the Garfield County parcels. Seconded by Ms. McCulloch. Motion carried unanimously.

The Board opted to address the two following timber sales together.

1006-6 FOOTHILLS #2 TIMBER SALE

Ms. Sexton said in May 2006 Foothills #1 Timber Sale was approved, and this is also a timber sale out of the Kalispell Unit located about 18 miles SE of Kalispell and is for 7,932 MBF with an estimated value of \$1,122,242.00. An additional Forest Improvement Fee of \$3.25/ton will be charged. There will be twelve harvest units totaling 760 acres. Silvicultural prescriptions would salvage dead and dying grand fir and also remove insect-infected and diseased trees. Regeneration treatments would consist of 408 acres of shelterwood harvest and 54 acres of seed tree harvest. Regeneration treatments are designed to promote the establishment of white pine and western larch. No old growth would be harvested. No new permanent road construction is required. A temporary road would be constructed to access two harvest units. The temporary road would be .4 miles in length and be reclaimed upon the completion of harvest activities. There will actually be a decrease in roads given the construction and rehabilitation of roads afterwards which according to the DEIS will result in major benefits for grizzly bears if the road closures are effective. There will be some logging near the Bigfork Nordic Center who has been supportive of this harvest. Ms. Sexton recommend approval of this sale.

1006-7 DAVIS POINT TIMBER SALE

Ms. Sexton said this timber sale is a smaller sale only 183 acres with an estimated volume of 170 MBF and is located 10 miles SE of Missoula. The value is estimated at \$6,827.00 with a Forest Improvement Fee of \$2.50/ton. This is commercial thinning of sapling trees and understory to increase growth in three harvest units. The overstory Larch would be left and trees would be retained for snag recruitment and to meet biodiversity goals. Access to the sale and all existing roads in the sale area are from previous activities. No new road construction is required. Public involvement was solicited through newspapers and notices posted along the upper portion of Miler Creek Road. Noxious weeds were a concern and equipment would be cleaned prior to entering the project area. DNRC would monitor the area for two years after harvest. Ms. Sexton requested approval of the Davis Point Timber Sale.

Motion was made by Ms. McCulloch to approve both the Foothills #2 and Davis Point Timber Sales. Seconded by Mr. Johnson.

Governor Schweitzer asked how are we doing on our sustained yield, how close are we this year?

Ms. Sexton said I would ask that of David Groeschl, we hoped to give a presentation to the Land Board staffers but there were a number missing at the meeting so we hope to present this next month.

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David Groeschl, DNRC Forest Management Bureau Chief, said prior to these two sales, we were at 26% of our sustained yield for the year. With these timber sales it will bring us close to 40% of our sustained yield for FY-07. In FY-06 we hit our target, our sustained yield being 53.2 million, we sold 53.3 million in FY-06.

Governor Schweitzer said it gets harder when the price of lumber collapses. I think we're about half or 40% of where we were in terms of timber prices just two years ago.

Mr. Groeschl said that's correct. Lumber prices have softened quite a bit, we've seen that in the bidding. Right now it seems like they have stabilized but they are down from where they were a year ago.

A vote was taken on the motion to approve the two timber sales. Motion carried unanimously.

1006-8 RIGHTS-OF-WAY APPLICATIONS

Ms. Sexton said I would note that we have pulled right-of-way applications #13919 and 13920 on pages 29 and 30 from consideration this month. We have 28 applications for right-of-way today consisting of several historic road applications, a new bridge access application from FWP at Travelers' Rest. This month the applications are: #11307 from Robert and Ann Evans for a private access road to a single-family residence; #11725 from Joan and Roger Harbin for a private access road to a single-family residence; #13893 through 13912 from the Lower Yellowstone Rural Electric Association for overhead electric distribution lines; #13913 from Sun River Electric Cooperative for an overhead electric distribution line; #13914 from the Montana Dept. Transportation for highway construction and maintenance; #13915 from Montana Dept. Fish Wildlife & Parks for a pedestrian bridge; #13916 from Judith Basin County for a public county road; and #13917 and 13918 from Southern Montana Telephone Company for buried telecommunications cables. Ms. Sexton recommended approval.

Motion was made by Mr. McGrath to approve the rights-of-way applications. Seconded by Mr. Johnson. Motion carried unanimously.

INFORMATIONAL ITEMS

Governor Schweitzer said I would like to tell the rest of the members of the Board that I asked Mary some time ago to look into when we do oil and gas leases to make sure the surface owners of land that is adjacent to the places that have been nominated for an oil and gas lease, be notified. It makes good real estate sense. Anybody who is a realtor knows that when there is a ranch for sale, the first people you contact are the ones next door – the ones who might be affected. So we're actually looking into what the protocol might be. For example, if you have a piece of land that is nominated and the surface owners that are abutting that piece of property, they would be contacted. I am suggesting we contact them before the auction. The department is looking into it and getting information as to what that would cost and how difficult that might be. It seems to be a good strategy for us to try and get as many dollars as possible which I am sure MonTRUST would agree with.

Motion to adjourn was made by Ms. McCulloch. Seconded by Mr. McGrath.